

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

FOR MR. CHIEF JUSTICE MARTIN

COURT OF APPEALS,
DISTRICT OF COLUMBIA
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IN THE

Court of Appeals, District of Columbia

OCTOBER TERM, 1930.

—
No. 5220.
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872

HERBERT B. CROSBY, ET AL.,
Appellants,
vs.
WILLIAM W. DODGE,
Appellee.

—
BRIEF ON BEHALF OF APPELLEE.
—

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The effort of the appellants on this appeal seems to be to convince this Court that its previous decisions in the cases of Johnson vs. Rudolph, 57 App. D. C. 29, Dougherty et al. vs. American Security & Trust Company, 40 Fed. (2d) 813, Dougherty et al. vs. Heurich, 40 Fed. (2d) 815, and Taliaferro v. Rwy. Terminal Warehouse Co., 58 W. L. R. 718, are contrary to the decisions of the Supreme Court of the United States,

and that these four cases, very deliberately decided, should, therefore, now be overruled.

This attempt is somewhat remarkable in view of the fact that no decisions of the Supreme Court of the United States are relied upon which have been handed down since the decisions in the cases hereinabove alluded to, and the further fact that all of these cases in the Supreme Court were brought to the attention of this Court with painstaking care by the counsel engaged in the argument of the four cases mentioned, and, as will appear from the opinions handed down by this Court in those four cases, the Supreme Court decisions referred to received the elaborate attention of your Honors.

The law has been announced in no uncertain terms by this Honorable Court in the cases of Johnson, American Security & Trust Company, Heurich and Railway Terminal Warehouse Company, above mentioned, and but for the earnestness with which counsel for appellants urge a reconsideration of these decisions, no attempt would be made to further discuss the bearing of the cases in the Supreme Court of the United States upon the situation in cases such as this one at bar. Under the circumstances, however, an effort will be made to point out how, in the view of the appellee, counsel for appellants have misconceived the purport of the rulings of the Supreme Court of the United States.

PROPOSITIONS CONCEDED BY APPELLEE.

In order that there may be no misunderstanding of the position urged by appellee it may be stated that it is conceded by him that:

(a) Congress may for the District of Columbia determine the necessity for paving or repaving a street therein and direct that the benefits be assessed against abutting property found to be benefited thereby.

(b) Congress may determine the amount of benefits to the property to be assessed therefor, provided the assessment does not operate arbitrarily, unreasonably or disproportionately as among those affected by it.

(c) Under statutes of this character enacted in accordance with the principles of constitutional law, property owners are not entitled to notice and opportunity to be heard.

(d) Equal and fair assessments for the cost of paving, measured by the front foot method, when not in excess of the benefits, as applied to property of substantially uniform depth and of comparatively equal value, are not illegal.

(e) The mere fact that the assessment may result in inconsequential inequalities, does not invalidate it.

ARGUMENT.

All of the above principles are amply established by the law as expounded by the Supreme Court of the United States; but appellants' counsel have made the mistake of relying upon general expressions of that high tribunal as laying down rules of universal application. Mr. Chief Justice Marshall in the case

of *Cohens vs. Virginia*, 6 Wheaton 264, 399; 5 L. Ed. 257, 290, has had this to say about the opinions of courts in general, as well as of his own court:

“It is a maxim not to be disregarded, that general expressions, in every opinion, are to be taken in connection with the case in which those expressions are used. If they go beyond the case, they may be respected, but ought not to control the judgment in a subsequent suit when the very point is presented for decision. The reason of this maxim is obvious. The question actually before the court is investigated with care and considered in its full extent. Other principles which may serve to illustrate it, are considered in their relation to the case decided, but their possible bearing on all other cases is seldom completely investigated.”

In many cases the Supreme Court has very plainly stated that the principles upon which appellants rely as establishing their right to impose the assessment under consideration in this case, are not of universal application and should not govern situations where the circumstances are such as would make it inequitable to apply them. Some of these cases have been cited by appellants in their brief. Others have not been referred to. For instance, in the case of *Wagner vs. Lesser*, 239 U. S. 207, 60 L. Ed. 231, 237 (cited on page 7 of appellants' brief), the Court determined that a state legislature might fix the amount to be assessed for a given improvement and designate the land and property benefited thereby upon which the assessment was to be made, without first giving an opportunity to the owners of the property to be assessed to be heard upon the amount of

the assessment or the extent of the benefit conferred. But it followed this statement by this significant utterance (p. 219):

“We do not understand this to mean that there may not be cases of such flagrant abuse of legislative power as would warrant the intervention of a court of equity to protect the constitutional rights of land-owners, because of arbitrary and wholly unwarranted legislative action. The constitutional protection against deprivation of property without due process of law would certainly be available to persons arbitrarily deprived of their private rights by such state action, whether under the guise of legislative authority or otherwise.”

So in *Hancock vs. City of Muskogee*, 250 U. S. 454, 457, 65 L. Ed. 1081, 1083, also cited by appellants, the Court said:

“We do not mean to say that if in fact it were made to appear that there was an arbitrary and unwarranted exercise of the legislative power, or some denial of the equal protection of the laws in the method of exercising it, judicial relief would not be accorded to parties aggrieved.”

To the same effect will be found expressions in *Withnell vs. Ruecking Construction Co.*, 249 U. S. 63, *Milheim vs. Moffat Tunnel Improvement District*, 262 U. S. 710, 721, and *Branson vs. Bush*, 251 U. S. 182, 189, all of which are relied upon by appellants in their brief.

Similar expressions will be found in other cases in the Supreme Court not cited by appellants, relating to special assessments, among which may be men-

tioned Road Improvement District vs. Pac. R. R. Co., 274 U. S. 188, 71 L. Ed. 992, and Wight vs. Davidson, 181 U. S. 371, 45 L. Ed. 900. In the case last cited the Court said (p. 385) that

“Special facts, showing an abuse or disregard of the law, resulting in an actual deprivation of property, may give grounds for applying for relief to a court of equity; and this was thought by a majority of this court to have been the case in *Norwood vs. Baker*.”

By reference to the case of *Norwood vs. Baker*, 172 U. S. 269, 43 L. Ed. 443, we find an illustration of “special facts” which would justify a court of equity in interfering. The village ordinance under consideration in that case provided that the cost of condemnation of a street, including the cost of condemnation proceedings, of advertising and other expenses, as well as the interest on bonds issued, should be assessed against the abutting property either in proportion to the benefits or per the front foot without reference to the benefits. An assessment was made under that ordinance pursuant to an award by the jury which declared that they made the “assessment irrespective of any benefit to the owner from any improvement proposed by said corporation”. The Court held the assessment illegal and in so doing, said “that the assessment against the plaintiff’s abutting property was under a rule which excluded any inquiry as to special benefits”. The Court laid down the following guide for distinguishing between a legal and an illegal method for making special assessments (p. 278):

“The power of the legislature in these matters is not unlimited. There is a point beyond which the legislative department, even when exerting the power of taxation, may not go consistently with the citizen’s right of property. As already indicated, the principle underlying special assessments to meet the cost of public improvements is that the property upon which they are imposed is peculiarly benefited, and therefore the owners do not, in fact, pay anything in excess of what they receive by reason of such improvement. But the guaranties for the protection of private property would be seriously impaired, if it were established as a rule of constitutional law, that the imposition by the legislature upon particular private property of the entire cost of a public improvement, irrespective of any peculiar benefits accruing to the owner from such improvement, could not be questioned by him in the courts of the country. It is one thing for the legislature to prescribe it as a general rule that property abutting on a street opened by the public shall be deemed to have been specially benefited by such improvement, and therefore should specially contribute to the cost incurred by the public. It is quite a different thing to lay it down as an absolute rule that such property, whether it is in fact benefited or not by the opening of the street, may be assessed by the front foot for a fixed sum representing the whole cost of the improvement, and without any right in the property owner to show, when an assessment of that kind is made, or is about to be made, that the sum so fixed is in excess of the benefits received”.

The Court then quoted (p. 292) from its prior opinion in *Cummins vs. Merchants National Bank*, 101 U. S. 153, 157, 25 L. Ed. 903, 905, as follows:

“We are of opinion that when a rule or system of valuation is adopted by those whose duty it is to make the assessment, which is designed to operate unequally and to violate a fundamental principle of the Constitution, and when this rule is applied not solely to one individual, but to a large class of individuals or corporations, that equity may properly interfere to restrain the operation of this unconstitutional exercise of power”.

The Supreme Court then added in the case of *Norwood vs. Baker*, *supra*, the following (p. 292):

“These observations are pertinent to the question of the power and duty of a court of equity to interfere for the plaintiff’s relief. The present case is one of illegal assessment under a rule or system which, as we have stated, violated the Constitution, in that the entire cost of the street improvement was imposed upon the abutting property, by the front foot, without any reference to special benefits.”

In so deciding the Supreme Court of the United States cited with approval (p. 280) certain passages from *Cooley on Taxation* (2d Ed., Chap. 20), as well as from *Dillon’s Treatise on Municipal Corporations* Sec. 761, in the latter of which the author says that:

“The decided tendency of the later decisions, including those of the courts of New Jersey, Michigan, and Pennsylvania, is to hold that the legislative power is not unlimited, and that these assessments must be apportioned by some rule capable of producing reasonable equality, and that provisions of such a nature as to make it legally impossible that the burden can be apportioned with proximate equality are arbitrary

exactions and not an exercise of legislative authority.”

The Supreme Court also in *Norwood vs. Baker*, *supra*, quotes with approval the language of Mr. Chief Justice Cooley in speaking for the Supreme Court of Michigan in the case of *Thomas vs. Gain*, 35 Mich. 135, 162, as follows:

“It is admitted that the legislature may prescribe the rule for the apportionment of benefits but it is not conceded that its power in this regard is unlimited. The rule must at least be one which it is legally possible may be just and equal as between the parties assessed; if it is not conceivable that the rule prescribed is one which will apportion the burden justly, or with such approximate justice as is usually attainable in tax cases, it must fall to the ground, like any other merely arbitrary action which is supported by no principle.”

Appellants rely to a very large extent (pp. 8 to 11 of their brief) on the second decision of the Supreme Court of the United States in *Schneider Granite Co. vs. Gast Realty & Improvement Co.*, 245 U. S. 288.

The facts are recited in the opinion of the Court upon the first appeal in that case, reported in 240 U. S. 55, 60 L. Ed. 523, 525.

The city charter which was attacked in that case contained a provision that one-fourth of the total cost of paving a street in St. Louis should be levied upon all the property fronting upon or adjoining the improvement according to frontage, and three-fourths according to area, upon all property in the improvement district. A meander line was laid down in the statute to be drawn midway between the street to be

improved and the next parallel or converging street on each side of the street to be improved, which line was to be the boundary of the district except as follows: if the property adjoining the street to be improved was divided into lots, the district line should be so drawn as to include the entire depth of all lots fronting on the street to be improved. If there was no parallel or converging street on either side of the street improved the district lines were to be drawn 300 feet from and parallel to the street to be improved; but if there should be a parallel or converging street on one side of the street to be improved to fix and locate the district line, then the district line on the other side should be drawn parallel to the street to be improved and at the average distance of the opposite district line so fixed and located. The land of the defendant in that case had a frontage on the west side of the improved street of 1083.33 feet out of a total of 4,372 feet in the district constituted. It was an undivided tract extending back nearly a thousand feet to the next parallel street called Church Road. On the south the adjoining property was divided into lots of small depth, and on the opposite side of the improved street the next parallel street was about 300 feet away. The ordinance treated Church Road as the next parallel street within the meaning of the charter, and included the defendant's tract to a depth of between four hundred and five hundred feet, while the small lots next to it were included to only about one hundred feet, the opposite lots to about 150 feet, and another undivided tract on the east of the street improved was included to a depth of 240 feet. The Court held that the ordinance was illegal and void in so far as it provided

for an assessment according to area, saying (p. 58) that:

“ * * * If the law is of such a character that there is no reasonable presumption that substantial justice generally will be done, but the probability is that the parties will be taxed disproportionately to each other and to the benefit conferred, the law cannot stand against the complaint of one so taxed in fact. *Martin vs. District of Columbia*, 205 U. S. 135, 139; 51 L. Ed. 743, 744, 27 Sup. Ct. Rep. 440”.

Your Honors cited the *Gast* case, *supra*, in support of your opinion in the case of *Johnson vs. Rudolph*, 57 App. D. C. 29, and appellants now contend that your Honors erred in relying upon the *Gast* case because it is claimed by appellants that the Supreme Court in its second hearing of that case (*Schneider Granite Co. vs. Gast Realty & Improvement Co.*, 245 U. S. 288, 62 L. Ed. 292), upheld the assessment against the defendant's lots in so far as such assessment was based upon the front foot plan.

It will be observed by reading the opinion of the Supreme Court in the second appeal that there was no question then before it of any violation of the Federal Constitution. As stated in the brief of counsel for appellee, filed therein, the writ of error on the second appeal presented only the question whether the judgment of the State Court conformed to the ruling of the Supreme Court of the United States upon the matters determined by it on the first appeal. The Court on the first appeal had not considered it necessary to go into the validity of the ordinance so far as the front foot assessment was concerned inasmuch as it found the assessment invalid when mea-

sured by the area. The case was remanded to the lower court for further proceedings not inconsistent with that opinion. The lower court held that the ordinance was severable and upheld it so far as the front foot tax was concerned (a question upon which the Supreme Court had not passed), and condemned it so far as the area assessment was concerned. As stated by the Supreme Court on the second appeal, "both parties sued out writs of error from this court, plaintiff on the ground that the State Court refused its application for area assessment, the landowners upon the ground that there was error in directing the judgment for any part of the tax bill sued on". The Supreme Court held that the question of the severability of the statute was purely one of local law upon which it could not pass, and inasmuch as the only question involved was whether the judgment of the lower court conformed to the ruling of the Supreme Court of the United States upon matters previously determined, there was nothing for the Supreme Court to pass upon with reference to the front foot assessment.

Let us apply the test laid down by the Supreme Court for determining whether the Borland Amendments are constitutional or not. As this Court has held in the case of Johnson vs. Rudolph, *supra*, the Borland Acts embody a rule or system of such character that it is obvious that the entire cost of street improvement is imposed upon abutting property without reference to special benefits, that substantial justice generally will not be done, that property owners will be taxed disproportionately to each other and to the benefit conferred, and that this disproportionate taxation applies to a very large

class of the taxpayers in the District of Columbia. Therefore, this piece of Congressional legislation was held unconstitutional as applied to the locality involved, as it must have been under the decisions of the Supreme Court of the United States.

Before adverting to the particular facts in the case now before this Court, it may be well to invite attention to certain features found in the opinions in some of the other cases stressed in the brief filed by appellants. It is not the purpose of counsel for appellee to discuss all of the cases cited by appellants, because it will be admitted, as shown by the concessions at the head of this brief, that these cases do lay down certain *general* principles as contended for by them.

In all of the cases cited by appellants the Supreme Court proceeds upon the assumption that the legislature has determined that the property assessed has been benefited. This will plainly appear from the opinion of that court in the case of *Norwood vs. Baker*, *supra*, and from the numerous cases cited by it in that case in substantiation of its conclusions, as well as from many other cases in the Supreme Court, among which may be mentioned *Hagar vs. Reclamation District*, 111 U. S. 701, 28 L. Ed. 569, and *Martin vs. D. C.*, 205 U. S. 135, 51 L. Ed. 743.

In the last mentioned case the Court had before it an Act of Congress applicable to the District of Columbia (27 Stat. at L. 255, as amended in 28 Stat. at L. 501), in which the jury were required to apportion the benefits "according as each lot or part of lot of land in such square may be benefited". The Supreme Court held that this language required the interpretation that in any event the assessment

against the real estate "is to be limited to the benefit". In so holding they upheld the statute under consideration, although they quashed the particular assessment involved because they believed the "jury understood their duty to be to divide the whole cost among the landowners, whether the benefit was equal to their share of the cost of not."

The same principle was laid down in the *Gast* case, *supra* (240 U. S. 55).

It will be noted that nowhere in the statutes now under consideration, the pertinent parts of which are copied into the appendix of appellants' brief, is there any legislative declaration that the property assessed under those acts will be benefited. It is a general prospective statute dealing with all property in the District of Columbia and making an arbitrary assessment whether the property is to be benefited or otherwise.

Considerable reliance is placed by appellants upon the case of *Withnell vs. Ruecking Construction Company*, 249 U. S. 63, 68 (See Appellants' Brief, pp. 17, 18, 24). The *Withnell* case is interesting because it involves the same provisions of the St. Louis Charter which had been under consideration in the *Gast* case, *supra*. Notwithstanding the prior decision in the *Gast* case, an attempt was made to levy an assessment on the area plan which, so far as it applied to the property assessed in the *Gast* case, was held invalid. The Supreme Court of the United States in determining the validity of the area plan assessment in the *Withnell* case, upheld it, notwithstanding its previous decision in the *Gast* case quashing an assessment under the same statute. The reason for upholding the assessment in the *Withnell* case was that

the Supreme Court of the State had found "that the property East and West of Broadway in the subdivision of the same for the purposes of assessment was treated with fairness and with as much equality as the situation permitted," and stated that upon the record it was not prepared to disturb the conclusion of the trial court.

It follows therefore that the Supreme Court has given countenance to the doctrine that a statute which under certain situations may be held to justify an assessment, may under different circumstances and in different situations, be unconstitutional in its application. It is a logical deduction, therefore, that although a statute has been upheld in some jurisdictions and under certain circumstances, a similar statute in other jurisdictions and applied under different circumstances, will be condemned.

The case of *French vs. Barber Asphalt Paving Co.*, 181 U. S. 324, 45 L. Ed. 879, is cited twice by appellants (See pp. 14 and 18) as authority for the proposition advanced by them. In view of the very vigorous dissenting opinion written by Mr. Justice Harlan and concurred in by Mr. Justice McKenna and Mr. Justice White, it must be assumed that the approval in that case by the Supreme Court of the United States of the front foot method of assessing abutting lots was based very largely upon the facts found by it which the court said justified it in differentiating that case from the decision in *Norwood vs. Baker*, *supra*. These facts are quoted from the concluding paragraph of the Court's opinion, and are as follows:

"The work done consisted of paving with asphaltum the roadway of Forest avenue in the

said (Kansas) City, 36 feet in width, from Independence Avenue to Twelfth Street, a distance of $\frac{1}{2}$ mile. Forest avenue is one of the oldest and best-improved residence streets in Kansas City, and all of the lots abutting thereon front the street and extend back therefrom uniformly to the depth of an ordinary city lot to an alley. The lots are all improved and used for residence purposes, and all of the lots are substantially on the grade of the street as improved, and are similarly situated with respect to the asphalt pavement. The structure of the pavement along its entire extent is uniform in character and quality. There is no showing that there is any difference in the value of any of the lots abutting upon the improvement.”

It was doubtless with this recital of facts in mind that your Honors said in the Johnson case, *supra* (p. 34) that:

“It may well be that conditions could exist so equitable and fair that an assessment on the front-foot plan might be sustained; but to do so there must be a relative equality in the value and depth of the abutting property, and the assessments must not exceed the benefits.”

Attached to the record in this case are two plats, one of the square on the North side of B Street, N. E., and the second and smaller plat showing the triangular-shaped block on the South side of B Street.

An inspection of the plat of the property in the block on the North side in which appellee's property is situated, shows the following facts: The lots abutting B Street vary in frontage from 14.67 feet to 115 feet; in depth from 52 feet to 226.75 feet; in area from 1332.24 feet to 10222.92 feet, the lot owned by

appellee having an area of 6569.06 feet; one of these abutting lots is wider in the rear than on the street front; others are narrower in the rear than on the street front; some lots extend back to alleys located at varying distances from the street; others have no access to any alley. While the lots are in the main rectangular some have off-sets which make them irregular in shape. Lot 816, having an area of 1657.76 feet will pay a larger assessment than does the appellee whose lot has an area of 6,569.06 feet. Upon certain of these lots there are no buildings or structures of any kind. Upon others the structures are far back from B Street and these structures front on alleys in the rear and not upon B Street at all. Such structures as have been erected are of varied character, some frame and some brick, and of greatly differing values (R. 4, 7).

The block on the South side of B Street is approximately triangular in shape. The lots are of varied depth. Most of them are of irregular shape and not rectangular. Lot 807 has a frontage of 113.33 feet on B Street and contains 2,153.37 square feet and is assessed for an amount nearly three times as great as Lot 8 which is several times as large. The same variation in the character and location of the structures erected on these lots is found as in the square on the opposite side of the street (R. 4, 7).

Under the decisions of this Court in the four cases mentioned on page 1 of this brief, the assessments against much, if not all, of the property on the South side of the street would be illegal. Would it be fair and equitable to assess the owners of some of these lots on the South side, and exempt others in the same block and on the same street from the assess-

ment? And if the owners of an appreciable percentage of the lots on the South side of B Street are exempted, would it be fair and equitable to assess the owners of lots on the North side? Such an assessment would seem to be violative of the principle approved by the Supreme Court of the United States in the case of *Norwood vs. Baker*, *supra* (p. 286), to the effect that the rule of apportionment must "be one which it is legally possible may be just and equal as between the parties assessed; if it is not conceivable that the rule prescribed is one which will apportion the burden justly or with such proximate justice as is usually attainable in tax cases, it must fall to the ground like any other merely arbitrary action which is supported by no principle."

A glance at a map of the City of Washington will disclose that a goodly percentage of real estate located therein must be exempted from assessment under the principle announced by this Court in the *Johnson* case and the other three cases cited. With such a large percentage of District of Columbia property exempt, is it just or fair that other property owners to whom the decision in the *Johnson* and other cases may not directly apply, should be required to pay a special assessment against their properties, when the effect of so doing would be to make them not only pay the special assessments directly imposed upon their own real estate, but also through general taxes paid to the District, contribute to the payment of the special assessments illegally levied against other properties which are exempt from assessment although comprehended within same identical Act of Congress? Surely this situation comes directly within the principle announced by the Supreme Court of the United States in *Norwood vs. Baker*, *supra*, to

the effect that "when a rule or system of valuation is adopted by those whose duty it is to make the assessment, which is designed to operate unequally and to violate a fundamental principle of the Constitution, and when this rule is applied not solely to one individual but to a large class of individuals or corporations * * * equity may properly interfere to restrain the operation of this unconstitutional exercise of power."

As was said by the Supreme Court of the United States in the case of *Gast Realty & Improvement Co. vs. Schneider Granite Co.*, 240 U. S. 55, 59, 60 L. Ed. 523, 526:

"The defendant's case is not an incidental result of a rule that, as a whole and on the average, may be expected to work well, but of an ordinance that is a farrago of irrational irregularities throughout."

A statute or ordinance which may be perfectly valid and workable in a city laid out as most cities are, is plainly invalid and unworkable in a city laid out on the plan of Washington.

But it is contended by appellants that appellee is not in a position to complain, because the answer alleges and the truth thereof is admitted by the motion to strike, that the paving of B Street was a benefit to the said property to an amount at least as large as the assessment against it.

Appellants have failed to correctly appreciate the situation in this case. Conceding that the property has been benefited to the extent of the assessment, that is not the question now before the Court. The question is whether the assessment for that benefit

has been imposed by any law which can be validly applied to his property.

Counsel for appellant (page 25 of their brief) indicate their inability to see how the situation on the South side of B Street affects the assessments on the North side. Conceding that appellee pays less in proportion to the area of his lot on the North side than does anybody else on that side of the street, this observation does not apply with relation to the assessments paid by property-owners on the South side. As to at least some of *them* the entire assessment is void under the decisions of this Court. The assessment, therefore, operates unequally along the block on B Street under consideration in this case and is discriminatory as against appellee. It makes no difference whether that discrimination is caused by properties on the South side or on the North side. The owners of both properties are appellee's neighbors, one as much as the other, and it is this inequality of assessment which works to appellee's disadvantage.

If the law under which the assessment purports to be levied is lacking in the constitutional safeguards to which every citizen is entitled, or if in its application to his property it violates any of these constitutional safeguards, or is of a character which, when applied, not solely to one individual, but to a large class of individuals or corporations, deprives appellee of his constitutional rights, then the fact that his property is benefited to the extent of the assessment is no defense to these proceedings. The assessment could be made only by virtue of a valid law. If the statute under which the assessment was made is not valid either because of its character or its unconsti-

tutional application, the law must fall, and with it the assessment.

It is apparent that the Congressional enactment under consideration in the case at bar, like the one reviewed in *Barnes vs. Dyer*, 56 Vt. 469, 471 (the opinion in which was approved by the Supreme Court of the United States in *Norwood vs. Baker*, *supra*) makes "no express allusion to assessment on account of benefit; neither does it limit the assessment to the amount of the benefit." Furthermore it does not create a particular taxing district. On the contrary, as stated by this Court in *Johnson vs. Rudolph*, *supra*, "it is a general prospective law." It sets up a *general legislative system* which, as stated by the Supreme Court of the United States in *Norwood vs. Baker*, *supra*, is violative of the Constitution "in that the entire cost of the street improvement was imposed upon the abutting property by the front foot without reference to special benefits." As further stated by this Court in the case of *Johnson vs. Rudolph*, *supra* (p. 31): "We are not dealing with an incidental benefit common to the whole community, or a legislatively determined method of assessing benefits in a particular locality, but with a general law applied to a unique situation owing to the peculiar manner in which the avenues of the City of Washington are projected."

The Acts of Congress quoted in the appendix to Appellants' Brief, and under the supposed sanction of which the tax complained of in this case is imposed, are subject to the condemnation imposed by the Supreme Court of the United States upon such legislation in the case of *Gast Realty & Improvement Company vs. Schneider Granite Co.*, 240 U. S. 55, and

Martin vs. District of Columbia, 205 U. S. 135, because, as said in the Gast case (p. 58):

“The law is of such a character that there is no reasonable presumption that substantial justice generally will be done, but the probability is that the parties will be taxed disproportionately to each other and to the benefit conferred.”

Respectfully submitted,

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